

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992)

Rate Regulation)

MM Docket 92-266

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**OPPOSITION OF BELL ATLANTIC¹
TO PETITIONS FOR RECONSIDERATION**

1. Introduction and Summary

Through their petitions for reconsideration in this proceeding, the monopoly cable incumbents renew their efforts to avoid any meaningful rate regulation, and to obtain preferential regulatory treatment that will give them an artificial competitive advantage as cable moves rapidly into traditional telephone services. Their claims to preferential treatment, however, are based on the same tired arguments that the Commission has already rejected and that have not improved with age or repetition. Consequently, their petitions for reconsideration should be denied.

Moreover, to the extent the rules adopted here already grant preferential treatment to cable, they should be modified to

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are The Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac telephone companies, The Diamond State Telephone Company, and New Jersey Bell Telephone Company.

bring them into line with the rules that apply to telephone companies.²

1. The Commission Should Reject Cable's Complaints About Using A Competitive Benchmark

In their initial briefs in this proceeding, the cable incumbents championed a benchmark approach to regulating cable rates as a way to avoid regulation altogether.³ Now, in contrast, the cable incumbents condemn this method of regulating rates as unfair and unsound.⁴ The reason for this about-face is simple. The Commission rejected cable's claim that the benchmark should be set at a level that would lock in cable's monopoly profits, and has proposed instead to set the benchmark at a level that reflects truly competitive rates.⁵

In any event, the complaints lodged here against the use of a competitive benchmark merely repeat the claims previously made in response to the Commission's further notice proposing to exclude low penetration systems in its calculation

² See Petition of Bell Atlantic for Limited Reconsideration at 2-8.

³ Rate Regulation, MM Dkt 92-266, Report and Order and FNPRM at 132, n.506 (rel. May 3, 1993) (collecting comments of cable operators and associations supporting use of a competitive benchmark).

⁴ See Viacom Pet. at 2-3 & Att.; Booth American Pet. at 10-13; Century Pet. at 2-8; Harron Pet. at 2-5; Wometco Pet. at 2-8.

⁵ Order at 132-137, 347-48 & App. E.

of a competitive benchmark.⁶ As Bell Atlantic and others demonstrated there, however, cable's claims are meritless and should be rejected.⁷ Cable's petitions for reconsideration on this issue should be denied for the same reasons.

2. The Commission Should Reject Cable's Attacks On The Price Cap Rules For Cable

The cable incumbents also resurrect their previous arguments against applying price caps to cable once rates are set

capable of providing a full range of voice, data, and video services.¹⁰ As a result of this convergence, competition between the two industries for communications services is increasing rapidly, and cable has already moved extensively into traditional telephone services.¹¹ Under these circumstances, applying different regulatory schemes to these two industries cannot be justified.

Second, the claim that price caps will stifle investment is equally flawed. As the Commission itself has found, applying price caps to cable in the absence of competition has many advantages over traditional regulation from the standpoint of consumers, cable operators and regulators alike.¹² Significantly, these advantages specifically include the fact that price caps will promote deployment of advanced new technologies and encourage improvements in productivity and efficiency.¹³ Moreover, price caps will also reduce the

¹⁰ Id.

¹¹ Id. In fact, the cable incumbents do not seriously

administrative burden imposed on both cable operators and regulators.¹⁴

In addition to their efforts to avoid price caps altogether, the cable incumbents also argue that the Commission should give preferential treatment to cable with respect to its treatment of external (or exogenous) costs. In particular, cable argues that the rules automatically should treat as external and recoverable through rate increases all programming costs, including the cost of programming obtained from affiliates,¹⁵ and all capital expenditures for system expansions and upgrades.¹⁶ Some cable operators even go so far as to claim that they should be able to pass through not just the costs themselves, but that they should also be permitted to automatically add on another 15 percent or more as a return on these costs.¹⁷

In contrast, the telephone rules permit external treatment only for costs "triggered by administrative, legislative or judicial action beyond the control of the

¹⁴ Id.

¹⁵ See Viacom Pet. at 10-13; Cablevision Systems Pet. at 16-22; Booth American Pet. at 22-23; Colony Communications Pet. at 11-12.

¹⁶ See Comcast Pet. at 9-12; Viacom Pet. at 4-10; Colony Communications Pet. at 4-7; Community Antenna Television Assoc. at 9.

¹⁷ See Comcast Pet. at 9-12; Viacom Pet. at 9, 12-13; Colony Communications Pet. at 7, 11; Booth American Pet. at 17-18.

carriers,"¹⁸ and that are unique and demonstrably not reflected in GNP-PI.¹⁹ Arbitrarily applying more lenient rules to cable than apply to telephone companies cannot be justified, and the Commission should expressly provide that cable operators may pass through "external" costs only to the extent its rules permit telephone companies to do the same.²⁰

If, on the other hand, the Commission determines that its existing rules for exogenous costs are unduly stringent, it should make clear that telephone companies will also receive the benefit of any more lenient rules adopted here.

3. The Commission Should Reject Cable's Complaints About Being Required To Provide Cable CPE On An Unbundled Basis

Several cable petitioners also complain about the Commission's rules requiring cable CPE to be unbundled from other services. For example, these petitioners argue as a general matter that they should be permitted to bundle CPE together with their programming services, or suggest that they should be

¹⁸ Policy and Rules Concerning Rates For Dominant Carriers, 5 FCC Rcd 6786, 6807 (1990).

¹⁹ See, e.g., Treatment of LEC Tariffs Implementing Stmt. of Fin. Acct. Standards, "Employers Acct. for Postretirement Benefits Other Than Pensions", 8 FCC Rcd 1024, 1031-1035 (1992).

²⁰ Bell Atlantic Pet. at 5-6.

permitted to recover the cost of promotional equipment offerings through their rates for other services.²¹

Again, however, this would give the cable incumbents an artificial competitive advantage as long as telephone companies are barred from doing the same. As a result, the Commission's rules should treat both cable and telephone companies alike, and the Commission's rules should be modified to the extent needed to ensure that this is the case.²²

4. The Commission Should Reject Cable's Request For Authority To Charge Non-Uniform Rates Within Their Franchise Areas

Finally, the cable incumbents seek authority to charge non-uniform rates to owners or operators of multiple dwelling units (MDUs) within the same franchise area, rather than establishing a single rate for all customers within this category.²³

As the Commission has recognized, the 1992 Cable Act affirmatively mandates that cable operators "shall have a uniform rate structure" throughout its service area.²⁴ The Commission

²¹ See Cablevision Systems Pet. at 11; Viacom Pet. at 15-16; Colony Pet. at 19-20.

²² Bell Atlantic Pet. at 6-7.

²³ See Comcast Pet. at 12-16; Viacom Pet. at 17.

²⁴ Order at 260 (quoting 47 U.S.C. § 543(d)).

has interpreted this provision to permit cable operators to establish rates for reasonable categories of customers within the same franchise area, including a uniform bulk discount for MDUs.²⁵

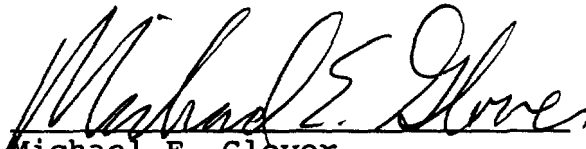
Contrary to the claims of the cable incumbents

CONCLUSION

The Commission should reject the cable industry's continuing efforts to avoid any meaningful regulation, and to obtain preferential regulatory treatment compared to telephone companies. As a result, the Commission should reconsider its rate regulation rules for cable only to the extent necessary to bring these rules into line with the rules that apply to telephone companies.

Respectfully submitted,

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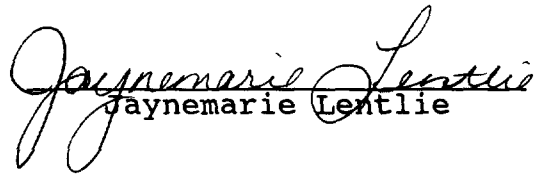

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June 21, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Comments of Bell Atlantic on Petitions for Reconsideration" was served this 21st day of July, 1993, by delivery thereof by first class mail, postage prepaid, to the parties on the attached list.


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